IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10886 of 1993

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

==========

BALSHASHTRI B PREMI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :
MR BIPIN P JASANI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
MR AD OZA for Respondent(s) : 2,
MR BA SURTI for Respondent(s) : 4,

==========

CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/07/2006

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges

the orders passed by the respondents No.1 and 2 whereby a decision has been taken to hand over the management of Prem Bharti Saket Hindi Secondary School run by the petitioner trust, to the respondent No.4.

2. The petitioner, Sharda Education Trust, had established a school by the name of Prem Bharti Saket Hindi Secondary Vidhyalaya (hereinafter referred to as the subject school) at Okha, Surat with effect from June, 1990. The said school was duly registered and recognised under the provisions of Section 31(8) of the Gujarat Secondary Education Act, 1972 (the Act).

3. It appears that subsequently, the petitioner trust decided to transfer the subject school from Okha to Ramnagar, in Surat. Necessary application in prescribed form was made by the petitioner, seeking approval of the respondent-Board for shifting the school from Okha to Ramnagar. By an order dated 25.12.1991, the said application was rejected. It appears that the petitioner again requested the respondent-Board for grant of approval for shifting the subject school from Okha to Ramnagar.

4. In the meanwhile, it appears that the petitioner was running the school at Ramnagar without due approval from the Board for shifting the school, therefore, the District Education Officer, Surat

had addressed several communications to the petitioner, directing it not to continue with the school at Ramnagar without due approval from the Board. It appears that by an order dated 22.12.1992, the registration of the school was cancelled by the respondent-Board. Being aggrieved by the said order, the petitioner challenged the same by way of appeal before the State Government. It appears that the said appeal is still not adjudicated.

5. During the pendency of the aforesaid appeal, by a communication dated 12.10.1993, the respondent-Board sent a copy of a resolution dated 5.10.1993 bearing No.511/1993 of the respondent-Board, informing the petitioner that the management of the subject school, namely Prem Bharti Saket Hindi Secondary Vidyalaya has been handed over to Saket Ashram, Okha. It is the aforesaid decision of the respondents of handing over the management of the subject school to the respondent No.4, that has given rise to the present petition.

6. Heard Mr.Bipin Jasani, learned advocate for the petitioner, Mr.Dipen Desai, learned Assistant Government Pleader for the respondents No.1 and 3, Mr.Hemang Raval, learned advocate for Mr.A.D.Oza, learned advocate for the respondent No.2 and Mr.B.A.Surti, learned advocate for the respondent No.4.

7. The learned counsel for the petitioner submitted that the impugned order was bad on the ground of being violative of the principles of natural justice as well as having been passed dehors the provisions of the Act. It was submitted that the impugned resolution has been passed by the respondent-Board in compliance with the directions issued by the State Government under Section 48 of the Act. It was submitted that the State Government has no power or authority to issue such directions in exercise of powers under Section 48 of the Act. Attention was drawn to the provisions of Section 48 of the Act to point out that under the said section the State Government was empowered to issue such directions as it may consider necessary only in regard to all or any the matters specified in Section 17 of the Act. It was submitted that Section 17 of the Act enumerates the powers and duties of the Board and that none of the clauses enumerated therein envisage handing over of the management of one school to another. It was submitted that the State Government was empowered to take over the management of a registered school under the provisions of Section 33 of the Act. However, while doing so, the State Government is required to follow the procedure laid down under Sub-section (1) of Section 33 of the Act. It was submitted that under the provisions of Sub-section (1) of Section 33, if the State Government forms an

opinion that it is necessary in the public interest to take over the management of a school, it may, after giving the manager of the said school a reasonable opportunity of showing cause against the proposed action and after considering the cause, if any, shown by him, take over the management of the school for a period not exceeding five years, as may be specified by the State Government.

8. It was submitted that in the circumstances, the action of the respondents being contrary to the provisions of the Act, is required to be struck down and that petition is required to be allowed.

9. The learned Assistant Government Pleader appearing on behalf of respondents No.1 and 3 and Mr.Raval, learned advocate appearing on behalf of respondent-Board, supported the impugned order and submitted that necessary procedure has been duly followed. It may be pertinent to note that neither the State Government, the respondent-Board nor the District Education Officer, Surat, have filed any counter affidavit in response to the allegations made in the petition.

10. Learned advocate, Mr.Raval pointed out that, pursuant to the proposal dated 23.2.1993 made by the District Education Officer, Surat, recommending that the management of the school run by the petitioner be handed over to the respondent No.4,

the Board had by a communication dated 13.4.1993 forwarded the said proposal to the State Government. It was submitted that, pursuant thereto, by an order dated 2.9.1993, the State Government had granted approval under Section 48 of the Act to the respondent-Board to handover the management of the subject school to the respondent No.4. It was submitted that, in the circumstances, the respondent-Board was justified in passing the impugned order and the same does not warrant any interference on the part of this Court.

11. Mr.B.A.Surti, learned advocate appearing on behalf of the respondent No.4-Trust submitted that, pursuant to the impugned order, the management of the subject school had been handed over to the respondent No.4. Attention was drawn to the averments made in para 13 of the petition wherein it is stated that after handing over of the management of the school to the respondent No.4, the Education Board had granted permission in favour of the respondent No.4 by an order dated 6.10.1993 and that, the respondent No.4, Trust had obtained a new recognition No.68-298 on 27.10.1993 from the S.S.C.E. Board, Vadodara. It was submitted that, in view of the illegalities committed by the petitioner Trust, the respondent authorities upon being satisfied that the management of the subject school was required to be transferred, had passed the order transferring the

management to the respondent no.4-Trust. It was submitted that, due procedure had been followed before passing the impugned order and that the same being just, legal and proper, does not call for any intervention on the part of this Court.

12.Upon perusal of the record of the case, it appears that in view of the cancellation of registration of the petitioner school by the order dated 22.12.1992, the District Education Officer had by a proposal dated 23.2.1993, recommended that the subject school be transferred to the respondent No.4. The respondent-Board had vide a communication dated 13.4.1993 forwarded the aforesaid proposal to the State Government. By a communication dated 23.6.1993, the State Government informed the respondent No.2 that the State Government had decided to handover the management of the subject school to the respondent No.4, however, the capacity of the said trust to administer the management of the school was required to be inquired into. A copy of the said communication was forwarded to the District Education Officer for necessary action thereon. Thereafter the District Education Officer, Surat, by a communication dated 17.7.1993, informed the State Government that the respondent No.4 was in a position to provide all facilities for running the school and that, there was no objection to handing over the management of the petitioner school to the

respondent No.4.

13. Thereafter, by a communication dated 2.9.1993 addressed to the respondent-Board, the State Government in exercise of powers under Section 48 of the Act gave its approval for handing over the management of the subject school to the respondent No.4.

14. Pursuant to the aforesaid order dated 2nd September, 1993, the respondent-Board passed the Resolution dated 5.10.1993 taking note of the order passed by the State Government under Section 48 of the Act. Consequently by an order dated 6.10.1993, the respondent-Board handed over the management of the subject school to the respondent No.4. It appears that a copy of the said resolution was forwarded to the petitioner trust on 12.10.1993, whereas the order dated 6.10.1993 does not appear to have been served on the petitioner trust.

15. As can be seen from the order dated 2.9.1993 passed by the State Government, the same has been passed in exercise of powers under Section 48 of the Act. Section 48 of the Act empowers the State Government to issue directions to the Board. However, the said provision provides that such directions shall be in respect of matters specified in Section 17 of the Act. Section 17 of the Act provides for the powers and duties of the Board and

enumerates 46 matters in respect thereof. However, none of the matters enumerated under Section 17 of the Act, relate to the taking over of the management of a school.

16. Provision for taking over management of a registered school is made under Section 33 of the Act. Sub-section (1) of Section 33 of the Act which is relevant for the purpose of the present petition reads as under:

> *"33 (1) Notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the manager of any registered private secondary school has neglected to perform any of the duties imposed on him by or under this Act or the regulations, and that it is necessary in the public interest to take over the management of the school, it may, after giving to the manager of such school a reasonable opportunity of showing cause against the proposed action and after considering the cause, if any, shown by him, take over the management of the school for such period as the State Government may, from time to time fix, so however, that such period shall not exceed five years in the aggregate."*

17. On a plain reading of the aforesaid section it is clear that: (1) the power to take over the management of a registered school vests in the State Government; (2) the said power is to be exercised in the event the State Government forms the opinion that the manager of the said school has neglected to perform any of the duties imposed upon

him under the Act or the regulations; moreover, the State Government should also find it necessary in the public interest to take over the management of the school; (3) before taking over the management the State Government is required to give the manager an opportunity of showing cause against the proposed action; and it is only after considering the cause, if any, shown by the manager that the management can be taken over; (4) the period for which the management is taken over is required to be specified by the State Government; (5) such period, cannot in the aggregate, exceed five years.

18. From the facts emerging from the record, as well as upon perusal of the order dated 2nd September, 1993 passed by the State Government, it is apparent that no procedure as laid down under section 33 of the Act has been followed. No opportunity of showing cause has been granted to the petitioner trust. In fact a unilateral decision has been taken at all levels. Moreover, the impugned order suffers from another infirmity, in that, the same does not specify the period for which the management has been taken over. On the contrary, the State Government has passed the impugned order in exercise of powers under section 48 of the Act, which as discussed above does not empower the State Government to pass such orders and has given a complete go-bye to requirements laid down under section 33 of the Act. It appears that it is with

a view to circumvent the provisions of section 33 of the Act that resort has been made to the provisions of section 48 of the Act. In the circumstances, the impugned order being violative of the aforesaid statutory provisions cannot be sustained.

19. The impugned resolution dated 5.10.1993 as well as the order dated 6.10.1993 made by the respondent-Board being consequential to the impugned order dated 2nd September, 1993, suffer from the same infirmity as the order dated 2nd September, 1993 and as such are void and non-est.

20. For the foregoing reasons, the petition is allowed. The order dated 2nd September, 1993 passed by the State Government, resolution No.511/93 dated 5.10.1993 as well as the order dated 6th October, 1993 passed by the respondent-Board are hereby quashed and set aside. Rule is made absolute accordingly, with no order as to costs.

(H.N.DEVANI, J.)

(ila)